

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ANDREA REX,

Plaintiff

v.

LSG SKY CHEFS, INC.

Defendant

CIVIL ACTION NO: 04-10568 WGY

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DISTRICT OF MASS.

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PLAINTIFF'S MOTION TO AMEND COMPLAINT

Plaintiff Andrea Rex, pursuant to Rule 15 of the Federal Rules of Civil Procedure, hereby moves to amend her Complaint to allege a claim for breach of warranty. As grounds therefor, plaintiff states:

1. Plaintiff Andrea Rex alleges that she suffered a cracked tooth when she bit into a foreign object in a catered airline meal that was prepared by the defendant.
2. Plaintiff's initial Complaint contains two counts -- violation of M.G.L. c. 93A and negligence.
3. Under Massachusetts law an action involving the sale or distribution of food containing foreign substances may sound in tort or in contract based upon breach of warranty. See, Nugent v. Popular Markets, Inc., 353 Mass. 45, 228, N.E.2d 91 (1967); Doyle v. Continental Baking Co., 262 Mass. 516 (1928).
4. Under Texas law an action involving the sale or distribution of food containing foreign substances is based on breach of warranty. Proof of negligence is not

required. To establish liability the injured party need only establish that the foreign substance that caused injury was in food that was manufactured or distributed by the defendant. See, Jacob E. Decker & Sons, Inc. v. Capps, 139 Tex. 609, 164 S.W.2d 828, 142 A.L.R. 1479 (1942).

5. There are a number of reasons that the defendant's liability for the unsafe food might be more appropriately judged under Texas law. The flight took off from Texas. Presumably, the food was prepared and put on the plane in Texas. The defendant's principal place of business is in Texas.

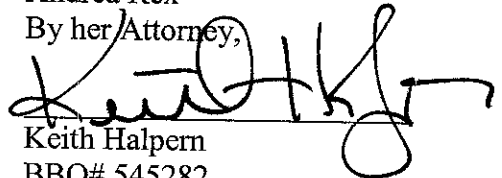
6. The defendant would suffer no unfair prejudice from the plaintiff's proposed amendment. There is no unfair surprise.

7. Provided at Attachment A hereto is an Amended Complaint.

CONCLUSION

For the foregoing reasons, the Court should permit the plaintiff to amend her Complaint to add a count for breach of warranty.

Andrea Rex
By her Attorney,

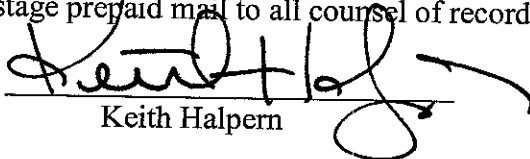


Keith Halpern
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Certificate of Service

I hereby certify that I have this date served the above by causing a true copy thereof to be mailed by first class postage prepaid mail to all counsel of record.

4/20/04
Dated



Keith Halpern